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CHARLES ELMORE
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *Petitioner,*

v.

CIVIL AERONAUTICS BOARD AND NATIONAL AIRLINES, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.

**BRIEF FOR NATIONAL AIRLINES, INC., RESPON-
DENT, IN OPPOSITION.**

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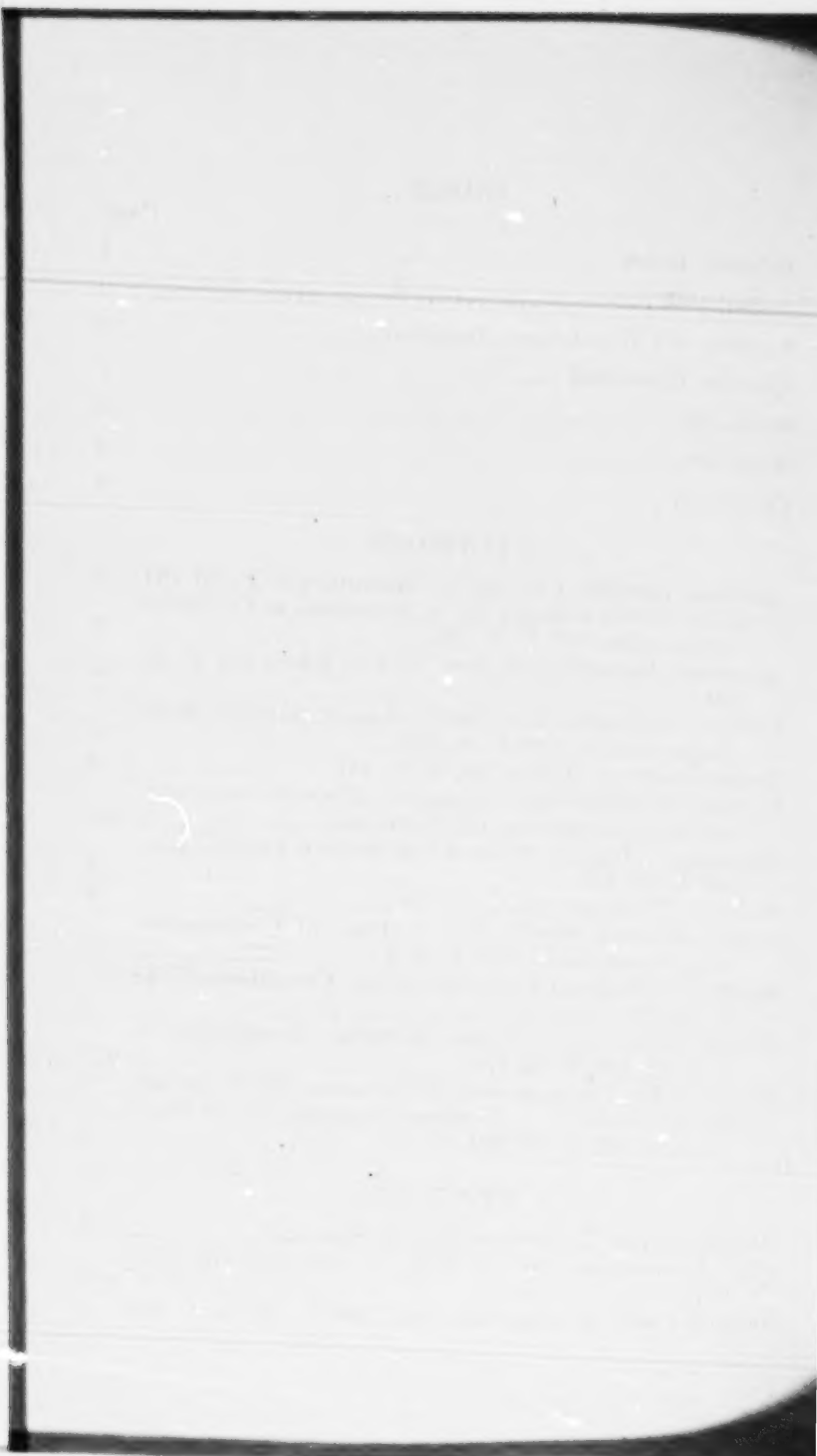
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

No. 858.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *Petitioner,*

v.

CIVIL AERONAUTICS BOARD AND NATIONAL AIRLINES, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.

**BRIEF FOR NATIONAL AIRLINES, INC., RESPON-
DENT, IN OPPOSITION.**

OPINIONS BELOW.

The Court below rendered no opinion other than the judgment and decree of April 23, 1948 (R. 96). The Order of the Civil Aeronautics Board which Petitioner sought to have reviewed is not yet reported; but appears at page 25 of the record.

JURISDICTION.

The jurisdiction of this Court is invoked by the Petitioner under Section 1006 (f), of the Civil Aeronautics Act of 1938, as amended (52 Stat. 977, 1025, 49 U. S. C. § 646 (f)), Section 240 (a) of the Judicial Code, as amended (28 U. S. C. § 347) and Rule 38, Paragraph 5 (c) of the Court.

STATUTES AND REGULATIONS INVOLVED.

The pertinent provisions of the Civil Aeronautics Act as amended (52 Stat. 977, 49 U. S. C. § 401, 402, 481, 486, 642, 646) are set forth on pages 11-12 of the Appendix to the petition for certiorari.

The pertinent provisions of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. § 1001, *et seq.*) are set forth at pages 12-13 of the Appendix to the petition for certiorari.

QUESTION PRESENTED.

Whether a labor union representing employees of an air carrier has "substantial interest" in, or suffers any "legal wrong" from or is "adversely affected or aggrieved" by an order of the Civil Aeronautics Board, fixing temporary mail rates to be paid by the Government to the air carrier to permit its continued operation, so as to give the union the right to judicial review of the order under Section 1006(a) of the Civil Aeronautics Act or Section 10 (a) of the Administrative Procedure Act? The former Act permits judicial review upon petition by any person disclosing a "substantial interest" in such order, and the latter Act permits judicial review by any person suffering a "legal wrong" or "adversely affected or aggrieved" by administrative action.

STATEMENT.

The Petitioner is a labor union representing pilots in the employ of Respondent, National Airlines, Inc. ("National"). On February 3, 1948, the Petitioner ordered a

strike of National's pilots. The strike is still in effect and National is carrying on its operations with pilots who refused to strike and with newly employed pilots.

On April 5, 1948, Petitioner filed a petition (R. 1) to the United States Court of Appeals for the District of Columbia seeking review and stay of an order of the Civil Aeronautics Board ("the Board") (R. 25) which fixed and determined fair and reasonable temporary rates of compensation for transportation of mail by aircraft pending the determination of permanent rates of compensation.

The Board's order fixing the temporary rate expressly finds, (1) that National's financial position is critical and the failure to grant a temporary rate may hamper its ability to perform the services required by public convenience and necessity; (R. 26), (2) that the present mail rate fails to meet its (National's) operating requirements (R. 26); (3) that a final rate could not be established in time to provide the immediate relief required (R. 26). The Order expressly provided that the proceeding would remain open pending entry of a final order which may be higher or lower than the temporary rate fixed in the order (R. 25, 31).

The petition for review was based on the contentions (1) that the order was issued in violation of the terms of the Civil Aeronautics Act; (2) that Petitioner was deprived of a fair hearing as required by the 5th Amendment to the Constitution, Section 1001 of the Civil Aeronautics Act and Sections 7 and 8 of the Administrative Procedure Act.

Section 1006 (a) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 977, 49 U. S. C. § 646) provides that orders of the Board shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition " * * * by any person disclosing a substantial interest in such order". Section 10 (a) of the Administrative Procedure Act provides that " * * * Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."

The petition for review (R. 1) contained no allegations of fact or other allegations disclosing (a) that it had a "substantial interest" in the order sought to be reviewed or (b) that it was a person "suffering legal wrong" or "adversely affected or aggrieved" by the Board's action.

Petitioner actually has no interest in the subject order and is not a person suffering legal wrong because of the order, nor is it adversely affected or aggrieved by such order. The Petitioner's concern with the order is at best speculative, remote, conjectural and indirect. The action of the Board in determining that National should be paid an increased rate of compensation for transporting the mail had no reasonably direct effect upon the Petitioner. None of the funds involved were paid by or taken away from the Petitioner. The rate fixed is compensation for the transportation of mail to be paid by the Government. The Petitioner makes no contribution to such payments except incidentally as a taxpayer.¹

Any effect which the Board's order might have upon the status of the labor dispute between the Petitioner and National is highly conjectural and remote. The Board's findings support the position that the failure to grant interim relief would actually prevent National from re-employing the pilots represented by Petitioner since National might be unable to continue its operations without a temporary increase in its rate of compensation for the transportation of the mail.

ARGUMENT.

1. The issue before the Court is whether Petitioner disclosed to the United States Court of Appeals for the District of Columbia a "substantial interest" under ¶ 1006(a) of the Civil Aeronautics Act in the order of the Civil Aeronautics Board which it sought to have reviewed. The

¹ Although it is clear that such an interest cannot support a petition on appeal, *Massachusetts v. Mellon*, 262 U. S. 447 (1923), the Petitioner has not even shown that it is a taxpayer.

Petitioner (R. 1-5) failed to disclose such an interest in its petition for review. It further failed to disclose such an interest in the other pleadings filed with the Court below. Further, Petitioner actually has no interest in the order which entitles it to the right of appeal.

The petition is devoid of factual allegations disclosing that the Petitioner is a "person suffering legal wrong" or "is adversely affected or aggrieved" within the meaning of section 10(a) of the Administrative Procedure Act. (60 Stat. 237)

A Petitioner's appealable interest must appear from the notice of appeal and the statement of reasons therefor. *National Broadcasting Co. v. Federal Communications Commission*, 132 F. (2d) 545, 548 (1942) (Affirmed 319 U. S. 239); *Yankee Network, Inc. v. Federal Communications Commission*, 107 F. (2d) 212, 224, 225 (App. D. C., 1939). Aside from the failure to allege facts, showing a substantial interest, Petitioner does not even state the legal conclusion that it has a substantial interest except by inference (R. 1-5).

Aside from its failure to state facts in its petition showing an appealable interest, Petitioner failed to disclose a substantial interest in the order during subsequent phases of the proceedings before the Court below. (See R. 33-61.) The contention that the Petitioner will be adversely affected or aggrieved by reason of the temporary adjustment in National's rate of mail compensation is highly speculative, indirect and remote. It complains not that the Petitioner has been deprived of any right, but that National has been granted something which may enable it to refuse to comply with the Petitioner's demands. Such an indirect and speculative interest does not constitute a "substantial interest" nor does it meet the test that the Appellant be a person who is adversely affected or aggrieved by the order. *American Lecithin Co., Inc. v. McNutt*, 155 F. (2d) 784 (CCA-2, 1946); *Simmons v. Federal Communications Commission*, 79 U. S. App. D. C. 264, 145 F. (2d) 578, (App.

D. C., 1944); *United States Cane Sugar Refiners Assn. v. McNutt*, 138 F. (2d) (CAA-2, 1943); cf. *Oklahoma v. United States Civil Service Commission*, 330 U. S. 127, 136-137 (1947); *Parker v. Fleming*, 329 U. S. 531 (1947).

The Petitioner's contentions that it has a "substantial interest"; that it is a person "suffering legal wrong" because of the Board's order, and that it is "adversely affected or aggrieved" by such order are not supported by the allegations of fact contained in the petition nor by the authorities cited. The decisions of this Court and of the Circuit Courts of Appeals establish that, " * * * The adverse effect must be a result that is not only *reasonably* sure to follow the enforcement of the regulations but will be something more than nominal or highly speculative." *United States Cane Sugar Refiners Assn. v. McNutt*, *supra*, at page 120. The cases cited by Petitioner establish the right of persons whose interests are *directly affected* to appeal on the ground that they are "adversely affected or aggrieved" but those cases do not abolish the requirement that the adverse effect must be reasonably direct and definite as distinguished from the remote and speculative interest advanced by the Petitioner on this case.

In the cases cited by Petitioner (Petition, p. 9), the moving parties were directly and definitely affected by the challenged orders. In *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U. S. 470, the Petitioner was directly financially interested because of the establishment of a competitive radio station serving an area which presumably could not economically support more than one station. In *Scripps Howard Radio, Inc. v. Federal Communications Commission*, 316 U. S. 4, the question of standing to appeal was not in issue. There the issue was the power of the Court to stay an order pending appeal. In that case, however, the effect of the order upon the appellant was direct since the order prevented appellant from serving a substantial part of its listening audience by reason of electrical inter-

ference. Cf. *National Broadcasting Co. v. Federal Communications Commission*, *supra*. In *American Power & Light Co. v. S. E. C.*, 325 U. S. 385, the order had a direct adverse effect upon the appellant as a stockholder of a corporation since it compelled the transfer of certain items from the surplus account to another account where it was not available for payment of dividends to appellant. In *Associated Industries of New York v. Ickes*, 134 F. (2d) 694 (CCA-2, 1943), the appellants were substantial consumers of coal and the challenged orders directed an increase in the minimum price of coal in the area where appellants were located. The effect of the order upon appellants was immediate and direct. The facts in the *Associated Industries* case were expressly distinguished by the same Second Circuit in *United States Cane Sugar Refiners v. McNutt*, *supra*, where the Court stated (p. 120):

"The instant case * * * does not fall readily into what we conceive to be the meaning of the term 'adversely affected' in the light of the principles relied on in our *Associated Industries* case. The supposed adverse effect is one which leaves the petitioners' produce free of all restriction. The *petitioners* are 'adversely affected' only in that their competitors are not hampered more. But though such a relationship to the subject matter of the regulations may be enough in some instance which does not now come to mind, it can only be so when the adverse effect of the regulations, present or future, is 'of sufficient immediacy and reality.' *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270, 61 S. Ct. 510, 512, 85 L. Ed. 826. The adverse effect must be a result that is not only reasonably sure to follow the enforcement of the regulations but will be 'something more than nominal or high speculative.' *National Broadcasting Co. v. Federal Communications Commission*, 76 U. S. App. D. C. 238, 132 F. 2d 545, 548." (Emphasis supplied)

2. The question presented by this petition involves no important or significant issue for decision. The Petitioner's interest is clearly remote and speculative and is

of a type which has uniformly been held insufficient to create a legal standing to challenge a decision of an administrative tribunal.

The sole issue before the Court is whether the Petitioner has legal standing to appeal the order of the Civil Aeronautics Board. The allegation that the petition involves a substantial question directly affecting the public interest is untrue and, besides, furnishes no basis for Petitioner to appeal. The contention that the Petitioner is protecting the public interest (Petition, pp. 6-7) is not established. No rights of Petitioner under the Civil Aeronautics Act or the Railway Labor Act are impaired by the Board's order. Such rights as Petitioner may have under these acts are directly enforceable in the courts. *Virginian Ry. Co. v. System Federation*, 300 U. S. 515; Civil Aeronautics Act of 1938, Sec. 1107; 49 U. S. C. § 647.

The interest of the Petitioner falls so far short of creating a legal standing to appeal that a decision in this case would not make any significant contribution to existing law.

CONCLUSION.

The decision below was correct. We respectfully submit that the petition for a writ of certiorari should be denied:

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